



Kentucky Law Journal

Volume 15 | Issue 4

Article 3

1927

Neutral Convoy in the World War

Amry Vandenbosch
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>



Part of the [Military, War, and Peace Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Vandenbosch, Amry (1927) "Neutral Convoy in the World War," *Kentucky Law Journal*: Vol. 15 : Iss. 4 , Article 3.
Available at: <https://uknowledge.uky.edu/klj/vol15/iss4/3>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

NEUTRAL CONVOY IN THE WORLD WAR

Visit and search was a peculiarly difficult problem during the World War, and one which caused much bitter diplomatic controversy between neutral and belligerent governments. The difficulties and inconveniences which the exercise of the belligerent right of visit and search now imposes upon neutral commerce suggest the question whether or not some changes in the rules governing this right ought to be made. Under the changed conditions of modern commerce, the exercise of belligerent search practically forces neutral commerce from the seas. The tremendously increased mercantile tonnage of the present is being carried by vessels of constantly increasing tonnage. These great vessels can not be quickly searched at sea, but must be taken into belligerent ports for the exercise of the right of search.¹ The long delays which this entails is ruinous to shippers, many of whom found it cheaper to lay up their vessels in port than to expose them to the hazards of belligerent action.

In view of these changed conditions, which make some modification of the right of visit and search imperative, it may be pertinently asked, what has neutral convoy to offer as a solution to this perplexing problem? In seeking an answer to this question, an examination of the only actual case of a neutral convoy in the World War ought to prove helpful.

I. HISTORY OF THE DUTCH CONVOY

The only neutral convoy during the World War was sent out by the Netherlands to the Dutch East Indies in July, 1918. Commerce between Holland and her colonies had all but ceased by the early months of 1918. The requisitioning in the spring of that year by the British and American governments of the Dutch vessels found in their ports was one of the last of a series of belligerent actions, all instrumental in driving Dutch commerce from the seas.

For this increasingly difficult problem the Dutch government had to find some solution. In the spring of 1918 it was

¹ The United States government, however, contended that it was not necessary to take the vessels into port for search. Note to the British government of October 21, 1915, *American Journal of International Law*, Vol. X, Sp. Supp., p. 76.

confronted with the urgent need of sending several cargoes of military supplies and government goods to the Netherlands East Indies. Furthermore, there were several government officials, together with their families, waiting to be transported to the colonies. The Minister of Marine decided that the best way out of the difficulty was the sending of a convoy. It was hoped that a convoy would serve the double purpose of rendering the transportation reasonably free from danger and, by reason of freedom from visit and search whether on the high sea or in belligerent harbors, of guaranteeing a direct and undelayed passage.

In the latter part of April, the Dutch government informed the governments of Japan, France, Great Britain, and the United States on the one side, and Germany and Austria-Hungary on the opposing side of the belligerents of its intention to send this convoy.² The Dutch note stated that the convoy would be composed of the following; first, the man-o-war, "Hertog Hendrik," accompanied by a collier; secondly, a Dutch merchant ship transformed into a man-o-war according to the rules of the Seventh Hague Convention of 1907, for the transport of military men to the Dutch East Indies, and having military supplies as cargo; and thirdly, a requisitioned Dutch merchant ship, under convoy of the man-o-war, "Hertog Hendrik," "for the transport of government passengers with their families and having for cargo exclusively goods of the Netherlands government destined for the government of the Dutch East Indies."³

The note further stated that the loading of all goods and the embarkation of all passengers would be effected under strict governmental supervision, that the passengers and their luggage would be subjected to a strict examination, that no private correspondence would be carried, and that the ships would carry no mail of any kind. With respect to the government goods it was declared that the usual manifest would be produced, with certificates of origin issued by the inspector of import duties.⁴

² The diplomatic correspondence with respect to the convoy is found in the Dutch White Book, "*Diplomatieke Geschiedeiden Betreffende de Uitzending van een Convooi naar Nederlandische Indië.*" Algemeene Landsdrukkerij. The Hague, 1918; and in *British Parliamentary Papers*, misc. no. 13 (1918), cd. 9028; also found in *British State Papers*, 1918-1919, III, p. 533.

³ *Dutch White Book*, p. 1.

⁴ *Ibid.*, note 1, *British Parl. Paper*, note 3.

The Japanese government in acknowledging the note of the Dutch government merely stated that the proper Japanese marine authorities had been informed of the route of the convoy. The German government requested to be informed of the names of the vessels that would compose the convoy and the date of departure, in order that this information might be sent to the German naval forces on the high seas. The German government further insisted that the convoy would not be guaranteed immunity unless it remained outside of the forbidden war zones. The Dutch government replied that it was the intention to have the convoy remain clear of the forbidden zones.⁵

Great Britain, as the chief naval power, was naturally more concerned with the proposed convoy than any of the other belligerents. Without waiting for official notification of the proposed convoy, it despatched a note to the Dutch government stating that it could not recognize the right of convoy and that it would "exercise the belligerents' right of visit and search of merchant vessels should the Netherlands government carry out their proposals."⁶ Not until after six weeks had elapsed and a second note had been sent, did the Dutch government receive any further word from the British government with respect to the proposed convoy. A note received on June 5 vigorously reasserted that the right of visit and search would not be abandoned, that Great Britain had never conceded the claim of immunity of ships under neutral convoy and that it could not possibly accede to the Dutch demand.⁷

But later that same day the Minister of Blockade, Lord Robert Cecil, handed the Dutch minister at London a lengthy confidential memorandum of a different tenor. The British government regretted the discourteous and imprudent course of the Netherlands government, and while still refusing to recognize the right of neutral convoy, it would, nevertheless, because of its friendly disposition toward the Netherlands, go out of its way to save the susceptibilities of the Dutch government. The British government was, on the whole, satisfied from the pub-

⁵ *Dutch White Book*, p. 1. The governments of Denmark, Norway, and Spain gave permission for the passage of the convoy through their waters. The governments of France, the United States and Austria-Hungary made no reply to the Dutch note. *Ibid.*

⁶ *Dutch White Book*, p. 3, Note 2; *Brit. Parl. Paper*, Note 2.

⁷ *Dutch White Book*, p. 3, Note 4; *Brit. Parl. Paper*, Note 10.

lished Dutch reports that the Dutch government proposed to give the belligerents practically the same guarantees and means of control that they could obtain by exercising the right of search. However, the British government wanted it clearly understood that it did not in any way abandon the fundamental principle that the "repression of contraband and the enforcement of blockade lie, by international law, with the belligerent alone, and not with the neutral —," that the right of visit and search would be waived in this particular case only as an act of courtesy, and that it must not be treated as a precedent for similar concessions in the future.⁸

The memorandum then laid down the conditions on which the proposed convoy would be allowed to make its journey without interference from the British government. These conditions were substantially the same as those put forward by the Dutch government, and were as follows:

"A. A detailed list of all passengers sailing in the convoy, to be furnished to His Majesty's Government, none but Dutch Government officials and their families being allowed to proceed.

"B. Full particulars of the cargo on board any merchant vessel sailing in the convoy to be supplied in the same way as is now done by the Netherlands Oversea Trust in respect of ships under their control.

"C. The Netherlands Government to give a formal guarantee that no goods shipped in the convoy are either wholly or in part of enemy origin.

"D. The ships sailing under the Dutch Naval flag, including the converted liner, not to carry any civilian passengers nor any goods or articles other than war-like stores destined for the colonial authorities or forces, of which the complete lists should be furnished.

"E. No mails, correspondence, private papers, printed matter or parcels to be carried by any ship in the convoy (except official despatches of the Dutch Government).

"F. The convoy not to sail until the above stipulated particulars and undertakings have been furnished and have been found satisfactory by the British authorities."⁹

The Dutch government, in reply, expressed its pleasure at the mutual agreement as to the mode of carrying out the plan for the convoy and declared that it was fully aware that the British government did not recognize the right of convoy, but that this point of international law could be left out of account in this case of a very special sort of a convoy serving exclusively

⁸ *Dutch White Book*, pp. 4-5; *British Parl. Paper*, Note 11.

⁹ *Dutch White Book*, p. 5. Note No. 5. *British Parl. Papers*, Note No. 11, Enclosure 2.

in the transportation of government passengers and government goods from a mother country to her colonies. A complete list of passengers and full particulars concerning the cargo was being prepared and would be sent to all the foreign legations concerned as soon as possible.¹⁰

In reply, the British government again reminded the Dutch government that the conditions under which convoy would be allowed to sail included the proviso that the British authorities must be satisfied as to the particular persons and goods to be shipped and in order to accomplish this it was essential that British experts in London should examine in detail the lists and documents furnished. Until these conditions had been fulfilled the convoy would not be allowed to sail.¹¹

It had originally been intended to have the convoy sail on the 15th of June, but due to several delays it did not sail until more than two weeks later. The convoy was to be composed of four vessels, the man-o-war, "Hertog Hendrick," the auxiliary cruiser, the "Tabanan," the merchant cruiser, the "Noordam," and the collier, the "Bengkalis." On June 14th, the manifest for the "Noordam" was ready and the next day this manifest covering the merchandise was sent to the legation concerned. The passenger list, both military and civil, was opened to inspection on the same day.¹² On the 17th a list of the goods on board the "Tabanan" and the "Bengkalis" was sent to the same legations.

The date for the departure of the convoy had in the meantime been set for the 19th, but on the 18th the British government presented a note at the Dutch Foreign Office again reminding the Dutch government that the British were waiving the right of visit and search only on certain conditions, that one of the conditions was that no goods of enemy origin should be carried by convoy, and that before the convoy would be allowed to proceed they must be satisfied that certain dye-stuffs and chemicals of German origin, which formed part of the convoy, could not be furnished from other than German sources.¹³ The British government pointed out that it was merely maintaining

¹⁰ *Dutch White Book*, p. 5. No. 6. *British Parl. Paper*, Note 13.

¹¹ *Dutch White Book*, p. 5, Note No. 7.

¹² *Dutch White Book*, p. 5, Note No. 8.

¹³ *Dutch White Book*, p. 6. Notes 9 and 10.

the position taken in a note to the Dutch government on June 23, 1916. In that note the British government took the position that as regards

"Netherland Government goods (to be sent to the East Indian Colonies) of enemy origin, His Majesty's Government are prepared to waive their wish that shipments should be made only thru the N. O. T. (Netherlands Overseas Trust), provided that the Netherland Government will adopt and put in force the same safe-guards as if the goods had been shipped through the agency of the Trust and will ensure that such goods will not be shipped in excess of normal quantities and will only be shipped in case they can not be procured elsewhere."¹⁴

The Dutch government in a note sent on the following day contended that the dye-stuff could not be placed in the category of "goods of enemy origin," since in regard to those materials there had for a long time existed a special arrangement between the Netherlands and Great Britain.¹⁵ Under this arrangement concluded by the two governments by an exchange of note in June, 1916, dye-stuffs could be imported into the East Indies without restriction, up to a maximum amount equal to the normal pre-war importations. The Dutch government itself undertook the purchase of the dye-stuffs directly from the German dye manufacturers, the materials were consigned to the governor general of the Dutch East Indies, and the materials were sold directly by the colonial authorities to the Javanese colour printers.¹⁶ By this method the re-exportation of the dye-stuffs was made practically impossible. The Dutch government insisted that the British note of April 28, 1918, had made no change in this arrangement.¹⁷

On June 19 the British minister at the Hague presented another memorandum to the Dutch Minister for Foreign Affairs to the effect that the convoy must not sail before the British government had received some more definite information in regard to passengers, cargo, and mails to be sent by the con-

¹⁴ *Dutch White Book*, p. 6. Note 11. Already in April, 1918, the British government had asked for information in regard to the amount of dye-stuffs that could be procured from other than the belligerent countries opposed to Great Britain. This information the Dutch government furnished in a note of July 23. *Dutch White Book*, p. 2.

¹⁵ *Dutch White Book*, p. 6. Note 12.

¹⁶ *Dutch White Book*, pp. 6-7. Notes 13 and 14.

¹⁷ *Dutch White Book*, p. 6. Note 12.

voy.¹⁸ In forwarding this information,¹⁹ the Dutch government took occasion to state that the departure of the convoy was not dependent upon the permission of any belligerent government, but that it would, nevertheless, hold up the departure of the convoy until all differences between the two countries had been cleared up.²⁰

All efforts to reach an agreement satisfactory to the British authorities were unavailing. The British government insisted that the right of visit and search would not be foregone unless all the German dyes were excluded from the cargo, and an explicit assurance was given to the effect that none of the remaining goods of the cargo were of enemy origin or owed more than 25% of their value to enemy labor or materials.²¹ In a reply to this note, the Dutch government gave the required assurance that with the exception of the dye-stuffs none of the merchandise on board ships of the convoy came from countries at war with Great Britain, nor owed more than 25% of its value to the labor or materials of such countries. In regard to the dye-stuffs the Dutch Government offered to hold up the distribution of the dye-stuffs after their arrival in India until such time as the difference of opinion with respect to the applicability of the arrangement of 1916 should be cleared up.²² The British government refused to accept the proposition of the Dutch government and insisted upon the disembarkation of the dye-stuffs as a condition to the waiving of the right of search.²³ The British government took the position that "the original arrangement by which dyes of German origin were allowed to go to the Netherland East Indies was contained in Clause 18G of the Netherland Overseas Trust agreement, which specifically lays down that the passage of goods of enemy origin required for factories, industries or public services in the Dutch Colonies would only be allowed so long as the goods in question were not procurable from other sources." One of the definite conditions accepted by the Dutch government in regard to the convoy was that no

¹⁸ *Dutch White Book*, pp. 8-9. Note 15.

¹⁹ *Dutch White Book*, pp. 8-9. Note 16.

²⁰ *Dutch White Book*, p. 2.

²¹ *Dutch White Book*, p. 9, Note No. 17.

²² *Dutch White Book*, p. 9, Note No. 18.

²³ *Dutch White Book*, p. 9, Note No. 19.

goods shipped would be either wholly or in part of enemy origin.²⁴

Upon receipt of these notes the Dutch government decided to remove the dye-stuffs from the cargo before allowing the convoy to depart.²⁵

When now the convoy was about ready to depart, the British government raised new objections. It objected to a passenger on board the "Noordam" whom the British suspected of being a propagandist in the service of Germany. The real objection, however, seems to have been that this man was "fanatically Mohammedan in his opinions" and "likely a dangerous fire-brand in the Muzelman question."²⁶ Another British objection was to certain parts of wireless installation found on board the "Tabanan" which were partly of German origin.²⁷ The Dutch government replied that it could not consent to the British demand that this passenger be not allowed to proceed. The passenger in question was an official of the Dutch East Indian government, and the Dutch government, from a thorough investigation into the case, was convinced that the British charges against him were unfounded. In regard to the parts of wireless apparatus the Dutch government replied that these were destined for the East Indian army and navy, were urgently needed by them and, like most of the Dutch military supplies, were partly of German and partly of Dutch origin.²⁸

On the 4th of July the Dutch government received word from the British government that it had withdrawn the last named objection, and immediately upon receipt of this message the Convoy proceeded on its voyage.²⁹

²⁴ *Dutch White Book*, p. 9, Note 20. See C of the conditions p. 7.

²⁵ Marine Minister Rambonnet bitterly opposed this concession and when the Dutch Ministry decided to make the concessions in spite of his objections, Rambonnet handed his resignation to the Queen, June 20. The Queen accepted his resignation on the 27th, but on the 29th she named him as her Adjutant Extraordinary. *Japists, Holland in Weltkrieg*, p. 173.

²⁶ *Dutch White Book*, p. 10, Notes 21 and 22.

²⁷ *Dutch White Book*, Note 19.

²⁸ *Dutch White Book*, p. 10, Note 23.

²⁹ *Dutch White Book*, p. 3.

II. THE RULE OF INTERNATIONAL LAW WITH RESPECT TO NEUTRAL CONVOYS

From the time of the Consolato Del Mare until the middle of the seventeenth century the belligerent right of visit and search seems to have gone unquestioned.³⁰ The right of exemption from search of its merchantmen sailing under convoy was first asserted by Sweden in the Anglo-Dutch War of 1653. The Swedish government announced the decision to send out its merchantmen under convoy by men-of-war whose commanders would be ordered to resist by force any attempt of a belligerent warship to visit and search any of the vessels under its convoy. Because of the short duration of the war no case of attempted search or of forceful resistance to search arose. At the close of this war a treaty was concluded between the Dutch United Provinces and England which contained the provision that the warships of either state would grant protection to all ships belonging to the other state which were making the same voyage or going in the same direction. When shortly after England and Spain were at war the Dutch government claimed exemption from search for her merchantmen, and though this right was not admitted by the British, an English squadron commander did waive the right of search to a convoy under Admiral De Ruyter. In the negotiations for a new treaty between these two powers in 1657 the Dutch again attempted to include a provision for the exemption from visit and search of all vessels under convoy. The argument for the right of convoy, used by the Dutch representative, was very much the same as that used by the Dutch government in its controversy with the British government during the World War. The Dutch representative argued that the convoy gave a better security to the belligerent government than could be obtained in any other way. However, the new treaty failed of negotiation.³¹

The English apparently suspected the Dutch of seeking to use the right of convoy to win a monopoly of the carrying trade.

³⁰ For the history of neutral convoys see: Hugh L. Bellot, *Journal of Comparative Legislation*, 18:260 ff; *International Law Situations*, Naval War College, 1911, ch. II, and Rolin, *Le Droit Moderne de la Guerre*, Chapitre III. Most treatises on international law contain a short historical account of the subject. See especially Lawrence, *Principles of International Law*, 669-674.

³¹ Bellot, *op. cit.*

If the Dutch could resist English search at sea by means of strong convoys much of the carrying trade might be attracted to the Dutch ships.³² For a long time Holland herself when a belligerent denied to neutrals exemption from search,³³ but later, in 1781, granted to neutral vessels exemption from search if under convoy of warships of their own flag, upon declaration of the commander of the convoy that the ships carried no contraband and were not engaged in unneutral service.³⁴ And when Dutch commanders resisted visit and search by English cruisers, of merchantmen under their convoy, the Dutch government supported their action.³⁵

The doctrine of convoy found increasing favor with the continental states. In the latter part of the 18th century, the right of neutral convoy was inserted as an agreement in many treaties. In accordance with these treaty agreements the word of the commander of the convoy was to be accepted and the vessels under convoy were to be free from visit and search. Such agreements were found in a number of treaties, as follows: United States and Holland, 1780; Russia and Denmark, 1782; United States and Sweden, 1783; United States and Prussia, 1785; Russia and Two Sicilies, 1787; United States and Morocco, 1787; Russia and Portugal, 1787; United States and Tunis, 1787; United States and France, 1800.³⁶ The Convention of Armed Neutrality of 1800 also contained a provision asserting the right of neutral convoy.³⁷

Great Britain steadily opposed any claim to exemption of the right of visit and search and continued to exercise this belligerent right. In 1798 a fleet of Swedish merchantmen under convoy resisted visit and were captured by a British squadron in the English channel. The vessels were all condemned by Lord Stowell in his judgment in the case of "The Maria." In this great decision Lord Stowell held, first, "that the right of visiting and searching merchant ships upon the high seas, what-

³² Letter of Secretary Thurloe at the Hague. *Thurloe State Papers*, Vol. IV. 203. Quoted by Bellot, op. cit.

³³ Declaration of war against France, 1869.

³⁴ Lawrence, *Principles of International Law*, p. 670.

³⁵ In 1762 and 1780, Bellot, op. cit.

³⁶ *Treaties of United States*, — pp. 328, 725, 903, 1046, 1091. Lawrence 670, Bellot, op. cit., and Naval War College, *International Law Situations*, 1911, pp. 39-42.

³⁷ *Scott, Armed Neutralities of 1780 and 1800. Appendix*, p. 646.

ever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestable right of the lawfully commissioned cruisers of a belligerent nation," secondly, "that the authority of the sovereign of the neutral country being interposed in any manner of mere force can not legally vary the rights of a lawfully commissioned belligerent cruiser," and thirdly, "that the penalty for the violent contravention of this right is the confiscation of the property so withheld from visitation and search."³⁸ In the spring of 1800 a Danish convoy of six merchantmen, under protection of the Danish frigate "Freya," resisted visit and search by the British and all were seized and captured as prize. However, the vessels were released and compensation was made when the King of Denmark agreed to suspend convoys.³⁹

However, in 1801, in a treaty with Russia, Great Britain for the first time since Cromwell and the last time until the Declaration of London recognized the right of exemption of visit and search of neutral vessels under convoy. Under this treaty privateers were wholly excluded from the right to visit and search, and in cases of neutral vessels under convoy of a warship, search could only be made if there were reasons for suspicion after examination of the papers on board the convoying vessel. And even then the search could only be made jointly by both commanders. This convention, which had also been acceded to by Denmark and Sweden, was annulled in 1807.⁴⁰

During the course of the nineteenth century no notable controversies arose over the question of convoy. The continental countries generally favored the right of neutral convoy while Great Britain as strenuously opposed it. Nothing was said about convoy in the Declaration of Paris. In several treaties made between the United States and other countries there were provisions as to visit and search. The treaty made with Brazil in 1828 provided that the stipulations in the treaty relative to the visiting and examining of vessels shall apply only to those which sail without convoy; and when said vessel shall be under convoy the verbal declaration of the commander of the convoy,

³⁸ 1 C. Rob. 340 ff. (1799); Scott, *Cases*, 1003-1008.

³⁹ Bellot, *op. cit.*

⁴⁰ C. de Martens, *Recueil*, Vol. VII, p. 263. Lawrence, p. 671, Bellot, *op. cit.*

on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and when they are bound to an enemy's port that they have no contraband on board shall be sufficient.⁴¹ Treaties with Columbia, 1846, and Italy, 1871, contained the same provision.⁴² The Treaty with Haiti of 1864, which was terminated in 1905, contains a similar but more detailed provision.⁴³ The United States throughout the nineteenth century claimed the right of exemption of visitation of her merchantmen when under convoy of her warships, and herself recognized the right during the Civil War.⁴⁴ However, the United States recognized the rule only so far as it applied to merchant vessels proceeding under convoy to ports not blockaded.⁴⁵

Japan also recognized the right of neutral convoy and applied it in the China-Japanese War, 1894, and again in the Russo-Japanese in 1904.⁴⁶ Russia also recognized the right in her prize regulations of March 27, 1895.⁴⁷ Italy has recognized this right in treaties with Central and South American states and the Italian Mercantile Code has long contained a regulation to this effect.⁴⁸ Spain, in the Spanish-American War, 1898, also recognized the right of exemption of visit and search of neutral vessels under convoy of national warships.⁴⁹ And even Great Britain, though opposing the doctrine in practice, waived the right of visit and search of neutral vessels under national convoy in the Crimean War.⁵⁰

At the London Naval Conference, 1908-1909, Great Britain finally consented to adopt the position of the continental states. The British and German memoranda alone of all the memoranda submitted to the conference on the question of convoy, maintained that under the existing rules the neutral vessel under

⁴¹ *Treaties and Conventions, 1776-1909*, Vol. I, p. 140.

⁴² Naval War College, *International Law Situations*, p. 40.

⁴³ *Treaties and Conventions, 1776-1909*, p. 938, Vol. I.

⁴⁴ Moore, *International Law Digest*, Vol. VII, p. 1204.

⁴⁵ *Ibid.*, Vol. VII, p. 493. Letter of Mr. Seward, August 12, 1861, to Dutch Minister.

⁴⁶ Naval War College, *op. cit.*, 1905, p. 197.

⁴⁷ Moore, *Digest*, VII, 493, and Naval War College, *op. cit.*, 1911, p. 39.

⁴⁸ Scott, *Declaration of London*, p. 51, and Naval War College, *op. cit.* 1911, p. 38.

⁴⁹ Naval War College, *op. cit.*, 1911, pp. 38-40.

⁵⁰ Hershey, Note, p. 519; *Parl. Blue Book*, Misc., No. 4 (1909) p. 25.

convoy of its own flag was not exempt from visitation.⁵¹ The provision in regard to convoy which were in the end incorporated into the Declaration begin by laying down the principle that "neutral vessels under convoy of their national flag are exempt from search."⁵² "The commander of a belligerent warship may request of the commander of the convoy a written statement of all information as to the character of the vessels and their cargoes, which could be obtained by visit and search." If the commander of the warship is not satisfied with the statement, he communicates his suspicions to the commander of the convoy and it then becomes the duty of the commander of the convoy to conduct an investigation, but the latter need not permit the presence of the belligerent at the investigation. The commander of the convoy must furnish the officer of the warship a copy of the report of the results of the investigation. If the commander of the convoy is of the opinion that the facts justify the capture of one or more vessels, he must withdraw his protection from such vessel or vessels, and allow them to be seized by the belligerent cruiser.⁵³ In case of differences arising between the two commanders the belligerent officer can do no more than make his protest and leave the settlement of the difficulty to diplomacy.⁵⁴

The Dutch convoy to the East Indies is the only case of a neutral convoy during the World War. At the conference of the three Scandinavian powers in February, 1915, the possibility of convoying Scandinavian merchantmen was considered and the principle of the right of neutral convoy espoused, but the

⁵¹ Scott, *Declaration of London*, 1909, pp. 49-52.

⁵² Article 61, *Declaration of London*, "Neutral vessels under convoy of their national flag are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by visit and search." Scott, p. 127.

⁵³ Art. 62. *Declaration of London*, "If the commander of belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to conduct an investigation. He must record the result of such investigation in a report, of which a copy is furnished to the officer of the warship. If, in the opinion of the commander of the convoy, the facts thus stated justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels." Scott, p. 127.

⁵⁴ See Report of the British Delegates—Scott, *Declaration of London*, p. 250, and "the General Report to the Conference," Naval War College, *International Law Topics*, 1909, pp. 141-143, for report see Art. 62.

policy was never put into actual practice.⁵⁵ Germany, in 1915, proposed to the United States that they convoy their merchant ships traversing the English seat of maritime war but the United States government ignored the proposal.⁵⁶ However, the action of the United States in 1917 of placing armed guards on merchant ships partakes somewhat of the nature of a convoy.

The general historical trend as reflected in practice and the increasing number of treaties recognizing the right up to the World War was clearly in the direction of the recognition of the right of neutral convoy. This general trend culminating in articles 61 and 62 of the Declaration of London has already been reviewed, but owing to the fact that the Declaration of London was never ratified the question was never really settled.

Turning to the publicists one discovers that the continental writers generally uphold the right of neutral convoy while the English and also the early American writers generally deny the right. Among the more recent English and American writers are found many who uphold the right,⁵⁷ and some who deny it.⁵⁸

The leading British decision on neutral convoy, "The Maria," has already been cited. English writers often refer to the dissenting opinion of Justice Story in "The Nereide" as confirming the decision of Lord Stowell in "The Maria." In this opinion Justice Story said, "The law deems the sailing under convoy as an act per se inconsistent with neutrality, as a premeditated act to oppose, if practicable, the right of search, and therefore attributing to such preliminary act the full effect of resistance."⁵⁹ But the decision in "The Nereide" rests upon the right of a neutral to place his goods on board an enemy armed merchantman, and not upon the right of neutral convoy, so that Justice Story's statement could have a bearing only on

⁵⁵ *Norse Yellow Book*, p. 22.

⁵⁶ *A. J. I. L.*, Spec. Supp., Vol. 9, p. 95. Note, Feb. 16, 1915.

⁵⁷ Among those who contend that neutral convoy exempts the convoyed vessel from visitation and search are Halleck, p. 615; Woolsey, pp. 363-364; Westlake, II, 300-301; Lawrence, pp. 669-672; Oppenheim, II, 535-536; Borchard's *Flore*, pp. 685-686; Hershey, pp. 518-519 and notes; Fenwick, pp. 550-551; Hyde, II, 457-458; Bluntschli, par. 824-825; Heffter, par. 180; Masse, II, 271; Rolin Book 3, Chap. 7; Calvo, I, 206, par. 2969. The Institute of International Law twice declared in favor of the principle, *Annales*, 1882, p. 48; 1913, p. 181.

⁵⁸ Kent, I, 162; Dana's *Wheaton*, Note 242; Hall, pp. 723-730, *Holland*, pp. 2, 4; Phillimore, par. 338.

⁵⁹ *Cranch*, 440.

enemy convoy and with reference to that, it was merely obiter dicta.

III. COMPATIBILITY OF THE DUTCH CONVOY WITH THE RULE OF INTERNATIONAL LAW

From a "positivist" point of view it may be doubted whether the right of neutral convoy had been definitely established at the time of the World War, owing to the failure of the ratification of the Declaration of London. And the diplomatic controversy between Holland and Great Britain did nothing to help in settling the question, since the Dutch government did not press the legal question involved after the first note. But assuming that Articles 61 and 62 of the Declaration were merely declaratory of international law, an examination of the compatibility of the demanded right of the convoy with the provisions of the Declaration may be both profitable and interesting.

According to the report of the committee which drafted these articles, the underlying principle upon which the articles are based is that the neutral government undertakes the responsibility of protecting those belligerent rights which the belligerent heretofore secured by the exercise of visit and search on the high seas. The neutral, therefore, assumes responsibility for the supervision of the vessels it undertakes to convoy. In the words of the drafting committee, "the neutral government undertakes to afford the belligerents every guaranty that the vessels convoyed shall not take advantage of the protection accorded to them in order to do anything inconsistent with their neutrality, as, for example, to carry contraband, render unneutral service to the belligerent, or attempt to break blockade. There is need, therefore, that a genuine supervision should be exercised from the outset over the vessels which are to be convoyed; and that supervision must be continued thruout the voyage."⁶⁰

The Dutch government on its own initiative undertook to give all the guaranties laid down in the committee's report,⁶¹ but as might be expected, this did not remove all possibilities of

⁶⁰ Scott, *Declaration of London*, Carnegie Endowment for International Peace, p. 178.

⁶¹ *Dutch White Book*, Note 1, p. 3.

controversy. It only served to center the controversy about the character of the persons and the goods to be placed on board the convoyed vessels.

It is doubtful whether the status of neutral convoy under international law has been at all changed as a result of the practice of the World War. Great Britain waived the right of search only on the understanding that it was an exceptional concession which could not be treated as a precedent for similar concessions in the future. And it ought also to be especially noted that the Dutch Convoy was of an unusual character. It was in no sense an ordinary commercial convoy but a government convoy from the metropolitan country to its colonial government in eminent need of military and other governmental material. So that even if the Dutch Convoy should set a precedent for the future, it would set a precedent only for a convoy very restricted in its nature.

IV. DUTCH CONVOY AS AN EXAMPLE OF THE SOLUTION OF THE PROBLEM OF VISIT AND SEARCH UNDER MODERN CONDITIONS

Though some modification of the right of search is imperative, it is very questionable whether the method employed in the Dutch Convoy is a solution of the perplexing problem, as one American writer asserts that it is.⁶² In the first place, it is to be noted that the Dutch Convoy was not in any sense a commercial or merchant convoy. It was a government convoy and concerned a governmental relationship between a mother country and its colonial government in pressing need of supplies. It may well be doubted whether the British would have waived the right of search had it been an ordinary merchant convoy. Nor is this all. There are very sharp practical limitations on the use of convoy. The expense of supervision on the part of the neutral government, the different rates of speed of the vessels in the convoy, the cost of the convoy to the government which has to furnish the convoying warships, all make the convoy impracticable because of its expense. In fact, the difficulty with which the Dutch Government could get bunker coal prevented it from even considering an ordinary merchant convoy.⁶³ The

⁶² Graham, *American Journal International Law*, Vol 17, p. 704.

⁶³ See statement of Dutch Minister of Marine in First Chamber of the States General, *British Parl. Paper*, Note 4.

extra costs to the Dutch government entailed in the sending of the convoy was 1,907,500 florins, or about \$763,000.⁶⁴

The effect of the World War on neutral convoy can best be summed up in the words of Dr. J. H. W. Verzyl, a leading Dutch authority on international law:

"It would appear as if convoy in the old meaning of the term in prize-law, has lapsed into permanent disuse. With the uncertainty of the comprehension of the contraband concept in relation to the standards of enemy destination, and the complexity of modern commerce the remedy will often appear worse than the disorder,—the neutral state cannot assume responsibility for the innocent character of the cargo, and conceivably differences in understanding might arise between the commander of the convoy and the commander of the belligerent warship, which might lead to dangerous conflicts."⁶⁵

A. VANDENBOSCH,

Assistant Professor of Political Science.

University of Kentucky

⁶⁴ *Dutch White Book*, p. 11.

⁶⁵ *Het Prijsrecht tegenover neutralen in den Wereldoorlog van*, 1914, 316. Hyde, II, 623, suggests governmental guarantees of cargoes. It is questionable whether neutral governments will assume this responsibility.